



particular Department to enable all matters to be included on the daily calendar. The Judge's court assistant shall bring the Court files in each matter to the presiding Judge for review prior to any hearing.

## RULE 7 - COURT SECURITY

A. Potentially violent situations; duty of party. In any type of case where a party believes that a potentially violent situation might arise, that party, through counsel or pro se, should notify the assigned Judge and court bailiff sufficiently in advance so that appropriate security measures can be taken.

B. Weapons. No weapons of any type will be allowed in the Silver Bow County Courthouse.

C. Exemptions. The following individuals are exempt from Subsection B of this rule:

1. On-duty Silver Bow County security personnel assigned to the courthouse; and,
2. Law enforcement officers transporting prisoners from any detention facility.
3. Law enforcement officers appearing in Court.

## RULE 8 - MOTIONS-CRIMINAL CASES

A. Unless for good cause the Court grants permission to proceed otherwise, all pre-trial motions in criminal cases, by both the prosecution and the defense, shall be filed within ten (10) days after the information is filed and in no event less than thirty (30) days prior to the date the case is set for trial.

Attorneys failing to comply with this requirement shall be subject to such sanctions as the Court deems appropriate or as provided by law. Courtesy copies of all motions and briefs shall be provided to the sitting Judge.

B. The moving attorney shall request a hearing date for such motions at the earliest opportunity so that the filing and hearing thereon shall not delay trial.

C. Pre-trial motions shall include, but not be limited to, suppressions, dismissal, in limine, severance, constitutional issues and discovery.

D. The Judges of the Second Judicial District, in an effort to have procedural conformity in Second Judicial District have approved for use in criminal cases four (4) forms which are hereby designated:

- 1) Acknowledgment of Rights - a form to be reviewed by Defendant with his/her counsel, signed by the Defendant and filed with the Court on or before the date of arraignment.
- 2) Plea of Guilty and Waiver of Rights - a form to be reviewed by Defendant with his/her counsel, signed by the Defendant and filed with the Court at the time of a Plea Change.
- 3) Order and Conditions of Release - a form to be used after a Plea of Not Guilty and the Defendant is released on bail either cash, surety or property. The conditions referred to in said order shall be binding on any person, firm or corporation providing bail for the Defendant.
- 4) Omnibus Hearing - a form to be prepared, used and signed by the State and the Defendant and presented to the Court for signature as indicated. The Court will not hold a formal Omnibus Hearing in criminal matters unless a written motion is filed with the Court.
- 5) Pre-trial Agreements presented to the Court shall state whether said Agreement is binding or non-binding between State and the Defendant.

**ONLY THE FORMS ATTACHED TO THESE RULES WILL BE ACCEPTED BY THE COURT.** (See *District Court Clerk for copies of forms, they are not reprinted in this book.*)

## RULE 9 - TRIAL CALENDAR-CRIMINAL AND CIVIL

A. Each cause shall be tried before the Judge of the Department in which it is filed, unless transferred.

B. Non-jury trials will be held throughout the year as time is available; jury trials will be held throughout the year, except the months of July, August and December. If the foregoing presents a problem for counsel or their client(s), a written Motion stating the reasons for a trial in the months indicated and an appropriate order shall be submitted to the presiding judge with copies to opposing counsel. Rule 19 of these Rules shall also apply.

C. The Judge in each Department shall establish both a jury and

non-jury trial calendar of all contested matters. Attorneys shall have the right to request, in any case, a trial date by filing with the Court a written Motion to set the matter for trial, otherwise, the Court will set a Scheduling Conference at which time a Scheduling Order will be agreed upon by the Court and respective counsel. This provision is not applicable in those actions in which a party is entitled by statute to temporary, interlocutory, or equitable relief, or unless the action is otherwise subject to statute or rules of procedure that require immediate relief or judicial action.

D. Counsel shall inform the Clerk of Court and the Court and/or the Court's staff as expeditiously as possible when a contested matter has been settled or vacated.

## RULE 10 - JURY SELECTION

A. During the first week of February of each year, the Clerk of Court who is designated the jury commissioner pursuant to Section 3-15-202 M.C.A., shall randomly select the names of 300 jurors for the jury term beginning the 15th of March each year. The Clerk of Court will direct a Notice of Selection as a juror to each of the persons selected as jurors together with a Qualification Questionnaire to be returned to the Clerk of Court no later than the 20th of February. Juror Questionnaires shall be in the form provided by Section 3-15-505 M.C.A.

The Clerk of Court shall have the authority during the initial month of juror selection, to excuse any juror requesting not to serve. A request not to serve shall be made by filing with the Clerk of Court a properly prepared, written request and shall be in the form of a sworn affidavit.

No later than the 1st of March of each year, the Clerk of Court shall divide all of the remaining jurors, as equally as possible, into three (3) groups which shall be known as group A, B and C. When a matter before the Court requires a jury, the Clerk shall assign jury panel "A" to hear the matter and thereafter shall rotate the panels without designation as to which Department of the Court requires a jury.

All jurors shall be notified by the Clerk of Court in any manner which ensures the best attendance of the jurors.

Copies of all juror Questionnaires shall be provided to counsel for respective parties at such reasonable cost as may be determined by the Clerk of Court.

B. Each Judge shall advise the Clerk of Court the number of jurors needed to try any pending case in his Department. All juries shall be selected pursuant to Rule 47 of the Montana Rules of Civil Procedure. If any particular case may require more jurors than any particular panel contains, the Clerk may put additional jurors from another panel on the panel selected. Except in the case of an emergency, no Judge shall excuse any juror from service in a Department other than his own.

## RULE 11 - DUTIES ASSIGNED CLERKS

The Clerk of Court shall assign one or more clerks to each District Judge in the Second Judicial District. It shall be the duty of said clerk to be in attendance at every hearing before the Court unless excused by the presiding Judge.

It shall be the duty of the clerk in attendance to prepare a minute entry on all proceedings in his/her designated Department, to be inserted into each file.

## RULE 12 - COURT FILES

A. The Clerk of Court is the custodian of all files of the Second Judicial District Court. The Clerk may make such rules and regulations as needed regarding the taking of papers and files from the Clerk's office. Such rules shall be in accordance with the Rules of Court and appropriate statutes; provided, however, that no will, bond, deposition, exhibit, or undertaking shall be taken from the Clerk's possession under any circumstances and no judgment before it is recorded, except by order of the Court in writing. No papers or records in a criminal action shall be taken from the files before trial, without a written order from the Judge.

B. No file shall be taken from the possession of the Clerk of Court, without the receipt therefor acknowledged in writing by the party taking the same; provided, however, that no record or paper belonging to a file shall be taken from the custody of the Clerk for a period of twenty-four (24) consecutive hours of the business day after its initial filing except by permission of one of the Judges of the Court.

C. The Clerk of Court shall be responsible for the safekeeping and return of all files but shall be allowed reasonable discretion in such matters.





**RULE 23 - PARENTING PLAN GUIDELINES**

*(Contact a member of the Judge's staff for copy)*

**RULE 24 - OPPOSED MOTIONS AND OTHER OPPOSED MATTERS; FILING; HEARINGS.**

A. Presentment for filing. As a condition of filing, all opposed motions, objections and other opposed matters requiring a hearing (hereinafter "motions") shall be presented to the clerk with the following:

1. A copy of the motion, along with any required and other attachments to the motion, for the assigned judge;
2. An original request for hearing, along with a copy of the request for the assigned judge;
3. An original Order and sufficient copies for all parties entitled to notice; and,
4. Stamped, addressed, plain (with Court's return address)

envelopes for all parties entitled to notice.

B. Service of request. The movant shall serve copies of the request for hearing on all parties entitled to notice.

C. Filing; forwarding to judge. The clerk will file the motion and request for hearing, and endorse a copy of each for the assigned judge. The clerk shall forward the endorsed copies, the original Order and copies, and the envelopes, to the assigned judge.

D. Notice of hearing. The assigned judge's staff will complete and file the notice of hearing, and mail or deliver copies to all parties entitled to notice, or the judge may direct the movant to complete this process.

E. General exceptions. The clerk also shall file opposed motions presented without a request for hearing, notice of hearing or stamped, addressed envelopes, in the following circumstances:

1. Prior to presentment to the clerk, the movant has delivered a copy of the motion and the request, the original and copies of the Order, and envelopes, to the assigned judge's office, and receipt is indicated on the original motion by initials of the judge's staff.
2. The motion has been approved for filing by the assigned judge's staff in circumstances other than those set forth in Subsection E(1) above;

E(1) above;

3. The motion is presented with a signed order disposing of the matter; or,
4. The motion is presented with a proposed order in which the date and time of the hearing will be entered, such as an order to show cause or temporary restraining order.

F. Exception for motions requiring fifteen minutes or less in criminal, delinquency and need-of-supervision cases. All motions in criminal, delinquency and need-of-supervision cases, requiring fifteen minutes or less for hearing, shall be presented only with sufficient copies of the motion for all parties entitled to notice. The clerk, at the time of filing, will stamp a hearing date and time on the original and copies of the motion. The movant shall serve a copy of the motion with the hearing date and time indicated, on all parties entitled to notice. With criminal cases, motions for Monday hearings must be filed by the preceding Monday; motions for Friday hearings must be filed by the preceding Friday. Any motions filed after these deadlines will be scheduled on the next regular calendar, unless otherwise ordered by the court.

G. Required attachments. With all motions requiring an evidentiary hearing, a list of witnesses shall be attached to the motion.

H. Requests alone. A request for hearing may be filed without a motion provided the request is presented with a notice of hearing, copies and envelopes. A copy of the request shall be served on all parties entitled to notice.

**RULE 25 - UNOPPOSED MOTIONS AND OTHER UNOPPOSED MATTERS; FILING**

A. Presentment for filing. As a condition of filing, all unopposed motions and other unopposed matters (hereinafter "motions") shall be presented to the clerk with the following:

1. A copy of the motion, along with any required and other attachments to the motion, for the assigned judge; and
2. An original proposed order disposing of the motion approved by all parties entitled to notice; approval of counsel may be indicated as telephonic approval; approval of a party pro se must be indicated by the party's signature on the proposed order.

B. Filing; forwarding to judge. The clerk will file the motion and

endorse a copy for the assigned judge. The clerk shall forward the endorsed copy of the motion and the original proposed order to the assigned judge for consideration.

C. Signed orders; filing; copies. The movant shall retrieve and file the order promptly after it is signed, and shall mail or deliver endorsed copies to all parties entitled to notice. The court takes no responsibility for the filing of orders.

**RULE 26 - VACATING SETTINGS; NOTICE TO COURT OF RESOLUTION**

A. Vacated only by court. Settings will be vacated only with the assigned judge's approval.

B. Procedure. With trial and merits settings, if all parties entitled to notice agree to vacate a setting, a proposed stipulation and order stating the grounds for vacating must be presented to the assigned judge. The order shall be signed by all counsel and parties pro se. With other settings, if all parties entitled to notice agree to vacate, a proposed stipulation and order may be presented to the assigned judge, or all parties may request the assigned judge's approval by telephone followed by a proposed stipulated order. Even if all parties entitled to notice agree to vacate, the court may refuse to vacate.

If all parties entitled to notice do not agree to vacate, the party desiring to vacate the setting shall file a motion on the issue. When vacation is granted and a hearing is still necessary, a new request for hearing shall be filed along with the order granting the vacation, except in civil court jury cases.

C. Notice of resolution. Upon dismissal, consent judgment, or other resolution reached which makes a setting unnecessary, all parties shall promptly notify the assigned judge.

**RULE 27 - DISCOVERY MOTIONS**

No discovery motion will be heard by the Court unless the party making the motion specifically sets forth to the Court the matters upon which the motion is based, including the questions and answers at issue, a description of the parties' disagreements as to such matters, and the parties' progress in resolving such disagreements.

**RULE 28 - DEFAULT JUDGMENTS**

A. Notice of default judgment. Plaintiff shall promptly mail or deliver endorsed copies of default judgments to defaulting parties at their last known address.

B. Proof of damages. Where default judgment entitles a party to unliquidated damages, that party must establish the amount of damages by evidence satisfactory to the Court.

C. Setting aside default; suspending execution. Only the assigned judge shall hear a motion to set aside a default judgment. In exigent circumstances, if the assigned judge is unavailable, any judge may suspend execution on a default judgment.

D. Attorney Fees. See Rule 29(C).

**RULE 29 - ATTORNEY FEES**

A. Recoverable fees. Attorney fees shall be recoverable only as allowed by statute, rule or contract.

B. Procedure. Unless attorney fees are awarded in the final judgment, attorney fees shall be requested by written motion filed within ten (10) days after the final judgment is filed. The motion shall include an itemization of time expended and an affirmation that the fees claimed are correctly stated and necessary. A separate affidavit is not necessary provided the motion is signed by counsel for the movant. Parties objecting to the motion shall file objections within fifteen (15) days after service of the motion, or such objections shall be deemed waived.

C. Fees. In all uncontested cases where reasonable attorney's fees (including attorney's fees in default judgments) are left to the discretion of the Court, the following guidelines shall be used:

- On all sums up to and including \$1,000 ..... 20%
  - On all sums in excess of \$1,000 and up to and including \$10,000 ...
  - ..... 10 %
  - On all sums in excess of \$10,000..... 2 %
- Extra fees may be allowed in cases of unusual labor.

In foreclosure proceedings and suits on promissory notes, no fee less than \$100.

Attorney's fees will not be fixed by the Court in probate cases, except upon motion and hearing.

~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~

## **RULE 30 - JURY INSTRUCTIONS**

Unless otherwise ordered by the court, requested jury instructions shall be presented to the assigned judge as follows:

1. Requested instructions shall include a cover sheet bearing the case number, caption, title, e.g., "Plaintiff's Requested Instructions," signature and a Praecipe.

2. Each requested instruction shall be identified by party and consecutive number, e.g., "Plaintiff John Smith's Requested Instruction No. 1," "Plaintiff John Smith's Requested Instruction No. 2," and so forth.

3. Citations supporting the requested instruction as a correct statement of the applicable law shall be listed on the bottom of each requested instruction.

4. A copy of each instruction with the heading "Instruction No. \_\_\_\_," with no numbers inserted and no citations listed, also shall be provided to the court.

5. In all cases where possible, the parties should supply the Court with proposed jury instructions on a 3.5 computer disc containing said Jury Instructions in WordPerfect 5.1, 6.0 or 6.1 format. This will enable the Court to expedite its preparation of the jury instructions for the trial. All discs should, in addition to indicating the cause, contain the name, address and phone number of counsel so the disc can be returned to counsel.

## **RULE 31 - PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In all matters where the Court must enter findings of fact and conclusions of law pursuant to Rule 52, M.R.Civ.Pro., all parties shall file with the Court, and serve upon opposing counsel, at least five days prior to the scheduled trial or hearing, proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely manner shall be cause for appropriate sanction including removal of the case from the trial calendar, dismissal or granting of a judgment, precluding the offending party from presentation of evidence or objecting to evidence submitted by the other party, or such other action as the Court deems appropriate. Post-trial amended and supplemental findings of fact and conclusions of law may be submitted in appropriate circumstances only and only upon order of the Court.

A. Filing; service. As a condition of filing, requested findings and conclusions shall be presented to the clerk with a copy for the assigned judge. The clerk shall endorse and forward the copy to the assigned judge. Copies of requested findings and conclusions shall be served upon all other parties.

B. Copies. In all matters before the Court in which the Court is required to make extensive Findings of Fact and Conclusions of Law, counsel for the respective parties shall submit a hard copy of such Proposed Findings and Conclusions for the Court's review. Counsel are also required to submit to the Court, a computer disk (3.5) containing said Findings and Conclusions in Wordperfect 5.1, 6.0 or 6.1 format. This will enable the Court to expedite its order regarding the matter. All disks should be labeled to indicate the cause, and the name, address and phone number of counsel so the disk can be returned.

## **RULE 32 - OFFICIAL RECORD OF COURT PROCEEDINGS**

In proceedings before Second Judicial District Judges, official court reporters or monitors are responsible for taking the official record. When parties in such proceedings need stenographic services which the official court reporter cannot provide, non-official reporters may be used. No one may record any such proceeding without the prior approval of the assigned judge.

## **RULE 33 - TRANSCRIPTS**

A party ordering a transcript from a court reporter must do so in writing within the required time set by statute, and paid for upon delivery unless otherwise arranged.

## **RULE 34 - ORDERS, JUDGMENTS AND DECREES**

A. Judge shopping prohibited. Any order, judgment, decree, or other matter (hereinafter "order") once presented to a judge for signature and refused shall not be presented to any other judge. Proposed orders shall be presented to the assigned judge unless unavailable. The assigned

judge's name shall be typed or printed on all proposed orders, directly below the judge's signature line.

B. Date of filing and entry. The date of entry of any order shall be the same as the date of filing and shall be shown by the clerk's stamp unless the order is filed in open court.

C. Parties' signatures required. Orders shall not be signed by the court unless signed by all parties entitled to notice except upon presentment hearing or consideration by the court pursuant to Subsection D below, or as otherwise provided by Supreme Court rule, second judicial district local rule, or statute.

D. Deadline for presentment; presentment hearing. Unless otherwise ordered by the court, all proposed orders shall be presented to the court within fourteen (14) days after the court's decision. The prevailing party shall be responsible for such presentment, except in domestic relations court cases unless the court orders otherwise both parties shall bear the responsibility.

If the signatures of all parties entitled to notice cannot be obtained by the fourteenth day, the prevailing party shall, no later than the fourteenth day, request a hearing on the issue. Before the hearing, all parties shall submit proposed forms of order. The court may review the proposed forms of order and rule on the form without hearing.

E. Filing; notice. The submitting party shall promptly file the order after it is signed and mail or deliver endorsed copies to all parties entitled to notice. The court takes no responsibility for the filing of such orders.

F. Service of orders filed by the court. The court will mail or deliver endorsed copies of all orders filed by the court, to all parties entitled to notice.

## **RULE 35 - ORDERS TO SHOW CAUSE**

The court may issue an ex parte order to show cause why a party should not be held in contempt only if the motion therefor is verified or accompanied by an affidavit specifically describing the factual basis for the claim of contempt and identifying verbatim that portion of the prior order of the court on which the contempt charge is based. The order to show cause shall include the date, time and place of the hearing.

## **RULE 36 - SETTLEMENT CONFERENCES**

All parties in civil cases will be required to participate in a settlement conference. Counsel for the parties (or the parties in pro se situations) are expected to confer and agree on a time, place and settlement master. The parties may select any qualified person to act as settlement master, and his or her fees shall be paid by the parties. In the event that the parties are unable to agree on a settlement master or have any dispute regarding setting up the settlement conference, the presiding Judge may be asked to appoint a settlement master.

The settlement conference shall be held in accordance with the following guidelines:

A. It shall be the responsibility of counsel to ensure that all named parties with the ultimate settlement authority are present in person at the settlement conference. If a corporation is so named, or if an insurance carrier is involved, the representative with ultimate settlement authority for said corporation and/or insurance carrier is required to be in person at the settlement conference. Availability of these named parties and/or corporate/insurance carrier representatives by telephone will not be acceptable. Further, the Court will not entertain requests by counsel to excuse either their clients or the corporate/insurance carrier representative from personal attendance at the settlement conference. Failure to comply with these conditions or failure to negotiate in good faith may result in impositions of costs of the conference.

B. A statement from each party or counsel shall be submitted directly to the settlement master no later than three (3) business days prior to the conference. The statement shall not exceed five (5) pages in length and shall contain:

1. The background of the case;
2. Factual and legal issues, including damages;
3. Points and authorities of law, if applicable;
4. A description of the strongest and weakest points in their case, both legal and factual, and that of their opponents;
5. The history of settlement negotiations, including a recitation of any specific offers and demands; and
6. The settlement statement shall not be filed or exchanged with

other parties and will be returned to the party providing the statement at the close of the settlement conference.

C. All communications made in connection with the settlement conference are confidential and will not be disclosed to anyone. Statements or communications of any kind occurring during the settlement conference may not be used by any party with regard to any aspect of the litigation. The parties will not subpoena or otherwise require the settlement master to testify in any future proceedings. No person present at or participating in a settlement conference shall be subject to examination concerning any statements made or alleged to have been made by that person or by any other participant or person attending, including statements of the settlement master. The settlement master may, for the sole purpose of establishing the fact of settlement, disclose that settlement was, in fact, agreed.

### **RULE 37 - DOMESTIC RELATIONS MEDIATION PROGRAM**

A. Mediation program established. The second judicial district elected to establish and will continue to maintain a domestic relations mediation program to assist the court, parents and other interested parties to determine the best interests of children involved in domestic relations cases, and/or to attempt to resolve the issues present in domestic relations matters. The program shall be administered and services provided by the Second Judicial District Court. In any contested family matter (including modification hearings), both parties and their respective counsel shall meet with the respective Court's duly appointed settlement facilitator for the purpose of resolution negotiations. It shall be the duty of all counsel in family matters to work with the designated facilitator so that a legal and reasonable settlement of all issues can be presented to the Court at a final hearing. If the matter cannot be resolved, Petitioner's counsel shall report to the Court which issues are still pending. Attorneys shall provide the Court and/or facilitator and opposing counsel with a fully completed financial declaration form and proposed findings of fact and conclusions of law prior to the trial.

B. Mandatory referral. Unless otherwise ordered by the court upon stipulation of the parties or for good cause shown, in every case involving a dispute over any domestic relations issue, focusing on child-related issues, the court shall enter an order referring the parties to the Domestic Relations Mediation Program.

C. Purpose. The purpose of this district's Domestic Relations Mediation Program is the early, fair, efficient, cost-effective and informal resolution of disputes. Nothing in the rules governing this program shall be construed to discourage or prohibit parties from pursuing private dispute resolution.

D. Immunity. Each Department of the Second Judicial District shall appoint a settlement facilitator to conduct settlement negotiations and written reports to the Court in all family matters. Persons appointed by the court to serve as settlement facilitators in this District's Domestic Relations Mediation Program, are appointed to serve as arms of the court and as such are immune from liability for conduct within the scope of their appointment.

E. Referral upon judge's own motion. The assigned judge at any time and without agreement of the parties may refer a case to the Court's settlement facilitator.

F. Referral order. In all cases to be referred, whether upon party's request or judge's motion, the court will complete and file an order requiring a status conference, settlement conference, appointing a settlement facilitator, and will mail or deliver endorsed copies to the facilitator and all parties entitled to notice.

G. Time, place and deadline for settlement conference. Unless set by the referral order, the time(s) and place(s) of the settlement conference shall be set by the settlement facilitator within a deadline set by the court. Any party or facilitator may request an extension of the deadline by motion directed to the assigned judge.

H. Attendance. The following shall attend and be present in person during the entire conference: each party of record including parties represented by counsel; each counsel of record who will be trying the case; and, for each party, the person or persons with complete authority to settle the case. This provision may be waived only by written order of the assigned judge. The court may refuse to grant a motion to waive attendance even if all parties agree to the motion. Upon motion of any party or its own motion, the court shall impose sanctions for failure to attend the settlement conference or have present all necessary parties

or their representatives with settlement authority, except upon a showing of good cause.

I. Settlement conference information. At least five (5) days prior to the conference, all parties shall provide the facilitator a settlement proposal with the information listed below. This information shall not be filed with the court nor in any way be made part of the court record. Upon motion of any party or its own motion, the court may impose sanctions for failure to provide the information to the facilitator.

1. List of the parties' real property and values;
2. Proposed distribution of the parties' personal property;
3. Proposal as to custody and parenting time;
4. Proposal as to child support and health care;
5. Proposed parenting plan;
6. If maintenance is requested, the parties shall complete the Court's financial declaration form;
7. Estimate of costs and attorney fees through trial;
8. The last or most recent settlement proposal made to other parties; and
9. Copies of case law, statutes, pleadings, exhibits, orders and any other information which would be helpful to the facilitator.

J. Good faith participation. Parties shall participate in good faith in settlement conferences. Good faith participation includes but is not limited to sufficiently preparing for the conference and engaging in meaningful negotiations during the conference. Upon motion of any party or its own motion, the court may award attorney fees and costs for failure to participate in good faith.

K. Canceling conferences. Settlement conferences may be canceled only by written court order. By written motion, any party or the facilitator may request that a settlement conference be canceled.

***Amended November 3, 1997***